

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13289
Docket No. 13036
98-2-95-2-60**

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(International Brotherhood of Electrical Workers,
(System Council No. 14**

PARTIES TO DISPUTE: (

**(Southern Pacific Lines (Denver & Rio Grande Western
(Railroad Company)**

STATEMENT OF CLAIM:

- "1. That the Southern Pacific Lines (Denver & Rio Grande Western Railroad Company) violated the controlling agreement, as amended, in particular Rule 32, but not limited thereto, when at Burnham Shops, Denver, Colorado, following investigation held on April 6, 1994, unreasonably, unjustly and arbitrarily assessed a fifteen (15) day suspension to Electrician J.W. Miller beginning April 24th through and including May 12th, 1994;**
- 2. That accordingly, the Southern Pacific Lines (Denver & Rio Grande Western Railroad Company) be ordered to compensate Electrician Miller, as follows:**
 - (a) Compensate him for all wages lost, at the prevailing rate of pay of FLI Electricians for eight (8) hours each day and all applicable overtime;**
 - (b) Make him whole for all seniority rights;**
 - (c) Make him whole for all vacation rights;**
 - (d) Make him whole for all health and welfare and insurance benefits;**

- (e) Make him whole for all pension benefits including Railroad Retirement and Unemployment Insurance;
- (f) Make him whole for any and all other benefits that he would have earned during the time withheld from service, and;
- (g) Any record of this arbitrary and unjust disciplinary action be expunged from his personal record."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Following an investigative Hearing, the Claimant was assessed a 15-day disciplinary suspension under the following charge:

"... failure to carry out the instructions of your supervisor to tear down the temporary shelter at the Load Barrel on Thursday, March 17, 1994, and subsequent absenting yourself without proper authority."

The Organization raised a number of procedural matters concerning the conduct of the Hearing. As in Second Division Award 13290 concerning another Hearing involving the Claimant on the same day, the Board finds these without substance.

On the date in question, the Claimant was late in reporting for duty. Before commencing work, the Claimant was subject to a discussion with the Assistant Plant Manager concerning his tardiness and absenteeism. The Claimant's attendance record

was not part of the charge here under review, but it clearly should have alerted him to the necessity of fully appropriate conduct while on duty.

With reference first to the charge of going off duty early without proper authority, the Claimant was scheduled to work from 3:00 P.M. to 11:00 P.M. The record shows that he left duty at 5:55 P.M. While contending that he was ill, the Claimant failed to request permission from or notify his Supervisor or any other supervisory employee. The Claimant stated he had advised a fellow worker. The record demonstrates, however, that the Claimant was fully aware, through previous reminders, of the requirement to seek proper authority to leave early.

As to the alleged failure to carry out instructions, the undisputed fact is that the Claimant together with other employees in the crew were instructed to take down a temporary housing facility. According to the Claimant's Supervisor, the Claimant said that "he would take it down when he saw the new building that was supposed to arrive, either that coming Friday or the following Monday." The Supervisor took this statement as an insubordinate refusal, while the Claimant contended he was speaking in a humorous fashion.

According to another employee, the crew other than the Claimant had taken the structure down "just before lunch." Whether this was before or after the Claimant's departure is not known. Thus, it is uncertain whether the Claimant would have participated in the assignment had he not left work.

The Board concludes, however, that the Claimant's early departure from duty, together with his apparent if not actual indication that he would not follow the Supervisor's direction, is sufficient to warrant the imposed discipline.

The degree of penalty (15-day suspension) was reasonable, when the Claimant's record of many instances of previous counseling and disciplinary measures as considered.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 15th day of June 1998.